Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

CARGILL PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 779
(CTA Case Nos. 6714 & 7262)

For: Refund or Issuance of a Tax Credit Certificate

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
JUN 18 2012 [illegible] 1:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Section 18 of Republic Act 1125[1], as amended, and *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals, *as amended*, of the

[1] An Act Creating the Court of Tax Appeals

Decision [2] and Amended Decision [3] rendered by the Special First Division of this Court on August 24, 2010 and April 20, 2011, respectively, the dispositive portions of which read as follows:

Decision dated August 24, 2010:

> "WHEREFORE, the instant **PETITION FOR REVIEW** is **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in the amount of **THREE MILLION FIFTY THREE THOUSAND FOUR HUNDRED SIXTY NINE AND 99/100 PESOS (₱3,053,469.99)** in favor of petitioner, representing its unutilized input VAT attributable or allocable to its zero-rated export sales for the period April 1, 2001 to August 31, 2004.
>
> SO ORDERED."[4]

Amended Decision dated April 20, 2011:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration dated September 14, 2010 is hereby **DISMISSED** for lack of Notice of Hearing; and the Motion to Dismiss is **DENIED** on the ground of estoppel.
>
> Petitioner's Motion for Reconsideration is hereby **DENIED**. Consequently, the Decision dated August 24, 2010 is hereby **REVERSED** and the Petition for Review docketed as CTA Case No. 6714 is hereby **DISMISSED** on the ground that the judicial claim was prematurely filed. The Petition for Review docketed as CTA Case No. 7262 is, likewise, hereby **DISMISSED** due to prescription (the claim for the period ending March 1, 2003) and premature filing of its judicial claim.
>
> SO ORDERED."[5]

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[2] Penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justice Lovell R. Bautista with Concurring and Dissenting Opinion by Presiding Justice Ernesto D. Acosta. *En Banc* Docket, pp. 58-99.
[3] Penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta; while Associate Justice Lovell R. Bautista maintained his vote in the Decision dated August 24, 2010. *En Banc* Docket, pp. 106-114.
[4] *En Banc* Docket, p. 98.
[5] *Id.* at 113.

The antecedent facts as culled from the Decision of this Court's former First Division are as follows:

"This case is a consolidation of two Petitions for Review separately filed by petitioner seeking the issuance of a tax credit certificate for its alleged unutilized and/or unapplied input valued-added tax (VAT) for the period covering April 1, 2001 to August 31, 2004 in the aggregate amount of ₱50,042,344.39, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
6714	April 1, 2001 to February 28, 2003	P27,847,897.72
7262	March 1, 2003 to August 31, 2004	22,194,446.67
	Total	**P50,042,344.39**

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 14th Floor, Citibank Tower, 8741 Paseo de Roxas, Makati City.

Petitioner's primary purpose is "to own, operate, run and manage plants and facilities for the production, crushing, extracting or otherwise manufacture and refining of coconut oil, coconut meal, vegetable oil, lard, margarine, edible oil, and other articles of similar nature and their by-products; to engage in research, breeding, developments, production, culture, processing, importation and exportation, and sale by wholesale of agricultural seeds/products of all kinds whatsoever and the rendition of technical assistance and services related thereto; to engage in the import and export business and to deal in all the goods produced and manufactured by it and the by-products thereof at wholesale; to engage in the buy and/or sell, export and/or import, acquisition, exchange, or otherwise dealing in sugar and other related products by way of wholesale in the domestic as well as export markets and to engage in all activities, including the purchase or lease of machineries and equipment, necessary for the operation thereof.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT enterprise with Tax Identification No. (TIN)/VAT Registration No. 000-110-659-000. As such, it filed its Quarterly VAT Returns for the period April 1, 2001 to August 31, 2004, including the amendments thereto, on the following dates:

Period Covered	Original Return Filed on	Exhibit	Amended Return Filed on	Exhibit
2nd Qtr CY 2001	7/25/2001	E, V		
3rd Qtr CY 2001	10/25/2001	H (CTA Case No. 6714)	6/11/2002	H-1, X
4th Qtr CY 2001	1/25/2002	K	6/11/2002	K-1, Z
1st Qtr CY 2002	4/25/2002	N	6/11/2002	N-1, BB
2nd Qtr CY 2002	7/25/2002	O		
1st Qtr FY ending May 31, 2003	9/25/2002	P, EE		
2nd Qtr FY ending May 31, 2003	12/23/2002	Q, FF		
3rd Qtr FY ending May 31, 2003	3/24/2003	R, GG		
4th Qtr FY ending May 31, 2003	6/25/2003	B		
1st Qtr FY ending May 31, 2004	9/25/2003	C		
2nd Qtr FY ending May 31, 2004	12/22/2003	D		
3rd Qtr FY ending May 31, 2004	3/24/2004	E		
4th Qtr FY ending May 31, 2004	6/25/2004	F		
1st Qtr FY ending May 31, 2005	9/23/2004	G		

In the said Quarterly VAT Returns, petitioner reflected an overpayment of ₱44,920,350.92 for the second quarter of CY 2001 to the third quarter of FY 2003 (April 1, 2001 to February 28, 2003) and ₱31,915,642.26 for the fourth quarter of FY 2003 to the first quarter of FY 2005 (March 1, 2003 to August 31, 2004), computed as follows:

	2nd Qtr CY 2001	3rd Qtr CY 2001	4th Qtr CY 2001
Taxable Sales	198,427,281.66	381,557,730.23	135,930,143.05
Zero-Rated Sales	473,354,243.00	580,569,507.00	430,276,914.00
Exempt Sales	347,042,710.03	728,331,292.00	611,710,221.00
Total Sales	**1,018,824,234.69**	**1,690,458,529.23**	**1,177,917,278.05**
Output VAT	19,842,728.17	38,155,773.02	13,593,014.31
Less: Input Tax			
Carried-over from prev. qtr.	38,199,071.54	36,933,754.79	27,325,991.94
Presumptive Input Tax	-	4,496,217.15	492,914.62
Domestic purchases	18,577,411.42	10,621,081.02	16,134,087.46
Total available Input Tax	56,776,482.96	52,051,052.96	43,952,994.02
Less Any VAT Refund/TCC Claimed			
Net Creditable Input Tax			
VAT Payable/(Excess Input Tax)	(36,933,754.79)	(13,895,279.94)	(30,359,979.72)
Less: Advance Payment	-	13,430,712.00	1,840,000.00
Tax Payable/(Overpayment)	**(36,933,754.79)**	**(27,325,991.94)**	**(32,199,979.72)**

	1st Qtr CY 2002	2nd Qtr CY 2002	1st Qtr FY 2003
Taxable Sales	422,325,623.80	169,245,889.30	63,206,898.90
Zero-Rated Sales	562,453,504.00	652,076,777.48	476,081,386.20
Exempt Sales	702,752,521.00	1,498,589,400.75	817,614,934.90
Total Sales	**1,687,531,648.80**	**2,319,912,067.53**	**1,356,903,220.00**
Output VAT	42,232,562.38	16,924,588.93	6,320,689.89

Less: Input Tax			
Carried-over from prev. qtr.	32,199,979.72	34,777,354.76	35,063,698.15
Presumptive Input Tax	-	-	-
Domestic purchases	44,809,937.42	17,210,932.32	9,553,468.44
Total available Input Tax	77,009,917.14	51,988,287.08	44,617,166.59
Less Any VAT Refund/TCC Claimed			
Net Creditable Input Tax			
VAT Payable/(Excess Input Tax)	(34,777,354.76)	(35,063,698.15)	(38,296,476.70)
Less: Advance Payment	-	-	-
Tax Payable/(Overpayment)	**(34,777,354.76)**	**(35,063,698.15)**	**(38,296,476.70)**

	2nd Qtr FY 2003	3rd Qtr FY 2003	4th Qtr FY 2003
Taxable Sales	320,894,788.30	250,257,189.10	52,860,375.10
Zero-Rated Sales	559,506,262.00	883,282,689.80	841,599,114.80
Exempt Sales	1,244,467,417.39	1,074,034,268.57	956,876,268.40
Total Sales	**2,124,868,467.69**	**2,207,574,147.47**	**1,851,335,758.30**
Output VAT	32,089,478.83	25,025,718.91	5,286,037.51
Less: Input Tax			
Carried-over from prev. qtr.	38,296,476.70	43,947,479.27	44,920,350.92
Presumptive Input Tax	366,627.73	1,346,124.84	1,919,473.95
Domestic purchases	36,190,306.68	16,233,369.67	10,613,969.33
Total available Input Tax	74,853,411.11	61,526,973.78	57,453,794.20
Less Any VAT Refund/TCC Claimed			
Net Creditable Input Tax			
VAT Payable/(Excess Input Tax)	(42,763,932.28)	(36,501,254.87)	(52,167,756.69)
Less: Advance Payment	1,183,546.99	8,419,096.05	10,346,816.52
Tax Payable/(Overpayment)	**(43,947,479.27)**	**(44,920,350.92)**	**(62,514,573.21)**

	1st Qtr FY 2004	2nd Qtr FY 2004	3rd Qtr FY 2004
Taxable Sales	87,444,776.10	63,268,426.40	31,675,341.20
Zero-Rated Sales	686,995,052.00	807,345,023.00	1,239,127,372.00
Exempt Sales	1,006,442,323.06	981,046,593.00	978,272,042.77
Total Sales	**1,780,882,151.16**	**1,851,660,042.40**	**2,249,074,755.97**
Output VAT	8,744,477.61	6,326,842.64	3,167,534.12
Less: Input Tax			
Carried-over from prev. qtr.	62,514,573.21	32,928,208.72	26,034,524.98
Presumptive Input Tax	-	-	63,543.83
Domestic purchases	5,281,078.93	3,607,119.81	3,702,213.10
Total available Input Tax	67,795,652.14	36,535,328.53	29,800,281.91
Less Any VAT Refund/TCC Claimed	26,122,965.81	4,173,960.91	
Net Creditable Input Tax	41,672,686.33	32,361,367.62	
VAT Payable/(Excess Input Tax)	(32,928,208.72)	(26,034,524.98)	(26,632,747.79)
Less: Advance Payment		-	419,748.00
Tax Payable/(Overpayment)	**(32,928,208.72)**	**(26,034,524.98)**	**(27,052,495.79)**

	4th Qtr FY 2004	1st Qtr FY 2005
Taxable Sales	22,632,468.20	5,341,002.60

Zero-Rated Sales	1,586,425,474.00	1,202,714,182.53
Exempt Sales	1,562,169,435.00	1,209,725,224.60
Total Sales	**3,171,227,377.20**	**2,417,780,409.73**
Output VAT	2,263,246.82	534,100.26
Less: Input Tax		
Carried-over from prev. qtr.	27,052,495.79	28,768,355.45
Presumptive Input Tax	45,758.00	-
Domestic purchases	3,603,407.48	4,194,111.97
Total available Input Tax	30,701,661.27	32,962,467.42
Less Any VAT Refund/TCC Claimed	-	512,724.90
Net Creditable Input Tax	30,701,661.27	32,449,742.52
VAT Payable/(Excess Input Tax)	(28,438,414.45)	(31,915,642.26)
Less: Advance Payment	329,941.00	-
Tax Payable/(Overpayment)	**(28,768,355.45)**	**(31,915,642.26)**

On June 27, 2003, petitioner filed with the BIR a written application for the refund of the amount of ₱26,122,965.81 representing unutilized input VAT for the period April 1, 2001 to February 28, 2003.

Due to respondent's inaction on its claim and in order to toll the running of the two-year prescriptive period within which to file a judicial claim for refund, petitioner filed before this Court a Petition for Review docketed as CTA Case No. 6714 on June 30, 2003.

On July 29, 2003, respondent filed his Answer praying that the Petition for Review be dismissed for lack of merit.

On September 29, 2003, petitioner filed with the BIR a supplemental application increasing the amount of unutilized input VAT to be claimed as refund for the period April 1, 2001 to February 28, 2003 from the original amount of ₱26,122,965.81 to ₱27,847,897.72.

On October 1, 2003, petitioner filed a Motion for Leave of Court to Amend Petition for Review dated September 29, 2003. As stated in paragraph 4 of petitioner's motion:

> Upon further verification of its supporting documents for the instant claim for refund or issuance of TCC, petitioner determined that its unutilized or unapplied input taxes attributable to its export sales is ₱27,847,897.72 and not ₱26,122,965.81 as indicated in the Petition for Review filed with the Honorable Court.

This court issued a Resolution dated October 22, 2003 granting petitioner's Motion for Leave of Court to Amend Petition for Review and also admitting the Amended Petition for Review filed on October 1, 2003.

On December 4, 2003, respondent filed his Motion for Leave to Amend Answer which the Court granted in open court on February 6, 2004.

In his Amended Answer, respondent raised the following Special and Affirmative Defenses:

'4. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent;
6. To support its claim, it is imperative for petitioner to prove the following, viz.:

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1(a) of Revenue Regulations No. 7-95 and Section 236 of the Tax Code, as amended;
b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;
c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.
d. That the input taxes of P27,847,897.72 allegedly paid by the petitioner on its purchases of goods and services for the period April 1, 2001 to February 28, 2002 were attributable to its export sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;
e. That petitioner generated export sales in the aggregate amount of P4,141,519,935.94 for the same period and those were paid for in acceptable foreign currencies and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), which were made the basis for the application for refund;
f. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;
g. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing

> that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);
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> h. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);
>
> 7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co. [P.I.] v. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club Inc., 98 Phil. 670);
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.'

On May 31, 2005, petitioner filed with the Large Taxpayers Service of the BIR an administrative claim for refund of unutilized input taxes for the period covering March 1, 2003 to August 31, 2004 in the total amount of ₱22,194,446.67.

On even date, petitioner filed before this Court a Petition for Review docketed as CTA Case No. 7262 praying for the issuance of a tax credit certificate corresponding to its alleged unutilized input taxes for the period March 1, 2003 to August 31, 2004 in the amount of ₱22,194,446.67.

On July 21, 2005, respondent filed his Answer in CTA Case No. 7262 alleging by way of Special and Affirmative Defenses that:

> '4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P22,194,446.67 being claimed by petitioner as alleged unutilized and/or unapplied input VAT for the period covering 1 March 2003 to 31 August 2004 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming refund/credit;
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with disfavor. (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).'

On July 2, 2007, petitioner filed a Motion for Consolidation of CTA Case No. 6714 with CTA Case No. 7262 considering that these cases involve common questions of law and of facts, albeit for different periods and in view of the necessity of proving that petitioner had sufficient input VAT from previous quarters to apply against its output VAT liability. The Court granted the said Motion in a Resolution dated July 10, 2007.

During the proceedings, petitioner proffered testimonial and documentary evidence. Respondent, on the other hand, waived his right to present evidence.

Both parties having filed their respective memorandum, the case was submitted for decision on August 24, 2009."[6]

On August 24, 2010, the Special First Division of this Court promulgated a Decision[7] partially granting the consolidated Petitions for Review and ordered the issuance of a Tax Credit Certificate in the amount of Three Million Fifty Three Thousand Four Hundred Sixty Nine and 99/100 Pesos (₱3,053,469.99) in favor of petitioner, representing its unutilized input VAT attributable or allocable to its zero-rated export sales for the period April 1, 2001 to August 31, 2004.

Dissatisfied, both parties filed their respective Motions for Reconsideration of the aforesaid Decision.[8] Thereafter, on January 19, 2011, respondent filed a Motion to Dismiss on the ground of lack of jurisdiction of the Court *a quo* over the instant petition.

[6] *Id.* at 58-67.
[7] *Supra* Note 1.
[8] Petitioner filed its Motion for Reconsideration on September 13, 2010; while respondent filed his Motion for Reconsideration on September 15, 2010. Thereafter, petitioner filed a Supplement to its Motion for Reconsideration on December 29, 2010.

In an Amended Decision[9] dated April 20, 2011, the Special First Division of this Court dismissed respondent's Motion for Reconsideration for lack of Notice of Hearing and correspondingly denied respondent's Motion to Dismiss on the ground of estoppel. The Court *a quo* similarly denied petitioner's Motion for Reconsideration and reversed the assailed Decision which resulted to a dismissal of the consolidated Petitions for Review docketed as CTA Case Nos. 6714 and 7262. In dismissing the said petitions, the Court *a quo* held that following the pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[10] (the "*Aichi* Case"), petitioner's filing of the judicial claim before this Court was premature as it failed to adhere with the 120 and 30 day period under Section 112(D) of the NIRC of 1997, as amended, which is crucial in filing an appeal before this Court.

Hence, the instant Petition for Review was filed.

Petitioner raised the following issues before this Court *En Banc*, to wit:

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[9] *Supra* Note 2.
[10] G.R. No. 184823, October 6, 2010.

"I. Whether CTA Case No. 6714 should have been dismissed on the ground that the judicial claim was prematurely filed.

II. Whether CTA Case No. 7262 should have been dismissed on the ground of prescription (the claim for the period ending 1 March 2003) as well as the premature filing of the judicial claim.

III. Whether the CTA-Division erred in requiring Petitioner to present invoices and receipts to support the input VAT of ₱21,633,716.56 (carried over from the 4th quarter of 2000).

IV. Whether the CTA-Division erred in not crediting Petitioner's advance VAT payments in the total amount of ₱14,195,983.19 against its output VAT liability."[11]

To encapsulate, the principal issue to be resolved in the instant case is whether petitioner is entitled to the issuance of a tax credit certificate for its alleged unutilized and/or unapplied input VAT for the period covering April 1, 2001 to August 31, 2004 in the aggregate amount of ₱50,042,344.39.

First, on the issue of prescription, petitioner argues that its non-observance of the 120-day period provided in Section 112(C) of the NIRC of 1997, as amended, does not deprive this Court of its jurisdiction to try cases involving claims for refund of excess input VAT.[12] Instead, petitioner opines that failure to comply with such period only gives rise to the defense of prematurity or lack of cause of action,

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[11] *En Banc* Docket, p. 19.
[12] *Id.* at 20-23.

which may be waived when it is not raised at the earliest opportunity.[13] Hence, petitioner concludes that considering that respondent never raised the defense of prematurity, and in fact was found to have actually participated throughout the proceedings *a quo*, then she has waived her right to raise the defense of failure to state a cause of action.[14]

Similarly, petitioner contends that the two (2)-year period under Section 229 of the NIRC of 1997, as amended, is imperative and should be taken into consideration in determining the timeliness of a judicial claim for refund.[15] Thus, petitioner asserts that the Supreme Court's pronouncement in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (the "Atlas Case")*[16] that the two-year prescriptive period mandated by Section 229 of the 1997 Tax Code applies to VAT refunds is controlling.[17] Also, petitioner posits that the use of the word "may" in Section 112(C) of the 1997 Tax Code indicates that judicial recourse within 30 days after the lapse of

[13] *Id.*
[14] *Id.* at 23-27.
[15] *Id.* at 27.
[16] G.R. Nos. 141104 & 148763, June 8, 2007.
[17] *En Banc* Docket, p. 29.

the 120-day period is directory and permissive, and not mandatory and jurisdictional.[18]

Moreover, petitioner submits that the *Atlas* doctrine was not overturned by the *Aichi Case* by the mandate of Article VIII, Section 4(3) of the 1987 Constitution which explicitly provides that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc.*"[19] Also, petitioner asseverates that even assuming *arguendo* that the *Aichi Case* validly overturned the doctrine laid down in the *Atlas Case*, the *Aichi* decision should only be applied prospectively in the interest of justice.[20]

We are not persuaded.

It is well-settled that the applicable provision for claims for refund or tax credit of unutilized input VAT is *Section 112 of the NIRC of 1997, as amended*, which reads:

> SEC. 112. **Refunds of Tax Credits of Input Tax.** –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* –

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[18] *Id.* at 32.
[19] *Id.* at 34-37.
[20] *Id.* at 37-40.

> Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx
>
> (C). *Period within which Refund or Tax Credit of Input Taxes shall be Made. –*
>
> In proper cases, **the Commissioner shall grant** a refund or issue the **tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period,** appeal the decision or the unacted claim with the Court of Tax Appeals. [Emphasis supplied.]
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In interpreting the aforesaid provision, the Supreme Court in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[21] *(the "Aichi Case")* clearly delineated two (2) separate periods for

[21] G.R. No. 184823, October 6, 2010.

every taxpayer to observe in claims for unutilized input VAT refund/credit. First, the application for issuance of a tax credit certificate or refund (the "administrative claim for refund") must be filed before the CIR within two (2) years reckoned from the close of the taxable quarter when the sales were made. Second, the petition for review (the "judicial appeal") must be filed before the Court of Tax Appeals within thirty (30) days from receipt of the CIR's decision denying the claim or within 30 days after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. The pertinent portion of the said decision reads:

> "Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply** for the **issuance of a tax credit certificate** or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections** (A) and (B)" within which to decide on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two

> scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.
>
> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. [130 Phil. 12 (1968)]* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."[22] [Emphasis supplied.]

As may be gleaned from the foregoing, the Supreme Court emphasized that mandatory observance of the 120-day period under *Section 112 (C) [formerly Section 112 (D)] of the NIRC of 1997, as amended*, is crucial in filing an appeal before the Court of Tax Appeals. Thus, as the Supreme Court puts it, **the premature filing of taxpayer's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.**[23]

Consequently, the foregoing pronouncement of the Supreme Court clearly belies petitioner's claim that failure to observe the 120-day period under *Section 112 (C) of the NIRC of 1997, as amended,* before perfecting an appeal before the CTA merely gives rise to the defense of lack

[22] *Id.*
[23] *Id.*

of cause of action, which may be waived when it is not raised at the earliest opportunity. Instead, to reiterate the doctrine laid down in *Aichi Case*, the premature filing of taxpayer's claim for refund/credit of input VAT before the CTA is tantamount to lack of jurisdiction on the part of the CTA to act on the claim and therefore warrants a dismissal of the petition.

Significantly, it is worthy to emphasize that the *Aichi Case* did not overturn the established doctrine laid down in *Atlas* Case as the latter was an interpretation made by the Supreme Court of the provisions under the 1977 NIRC, prior to its amendment by Republic Act (RA) No. 7716; whereas the decision rendered by the Supreme Court in the *Aichi* Case was an application and interpretation of the NIRC of 1997, as amended.

In ***Marubeni Philippines Corporation vs. Commissioner of Internal Revenue***,[24] We held that the need to harmonize the provisions under *Section 106 (now Section 112) and Section 230 (now Section 229) of the Tax Code of 1977, as amended*, is no longer necessary due to the clear legislative intent embodied in the amendatory provisions of *RA No.*

[24] CTA EB No. 557 (CTA Case No. 6469), March 23, 2011.

7716 and RA No. 8424, which clearly outlined the prescriptive period in claiming administrative and judicial claims for unutilized input VAT refund/credit, thus:

> "Significantly, it is emphasized that the premise of the Supreme Court's ruling in the *Atlas* Case was anchored on the need to harmonize the provisions on Refunds or Tax Credits of Input Tax under Section 106 (now Section 112) with the two-year prescriptive period for instituting a suit or proceeding for the Recovery of Tax Erroneously or Illegally Collected under Section 230 (now Section 229) of the Tax Code of 1977, as amended, citing the cases of *ACCRA Investments Corporation* v. *Court* of *Appeals* [G.R. No. 96322, 204 SCRA 957, 963-964, December 20, 1991] and *Commissioner* of *Internal Revenue v. TMX Sales, Inc.* [G.R. No. 83736, 205 SCRA 184, 187-192, January 15, 1992]. As previously discussed, <u>prior to the effectivity of R.A. No. 7716 and R.A. No. 8424, there was no specific provision on judicial claim for unutilized input VAT refund/credit under *Section 106* of *the NIRC* of *1977,* hence, there is the need to harmonize the provisions of *Section 106 with Section 230* of *the Tax* Code</u>.
>
> It was in the advent of R.A. No. 7716 and R.A. No 8424 when the legislature specifically provided for a judicial recourse with the Court of Tax Appeals in claiming unutilized input VAT refund/credit under *Section 106 (D)* of *the NIRC* of *1977 (now Section 112* of *the NIRC* of *1997)* within the period of thirty (30) days reckoned from receipt of the decision of the CIR denying the claim or after the expiration of a given period (now 120 days)." [Emphasis supplied.]

Based on the foregoing, it is clear that the *Aichi* Case remains the prevailing doctrine insofar as the mandatory observance of the 120-30-day rule under *Section 112 (C) of the NIRC of 1997, as amended.* Thus, the Supreme Court's pronouncement in the *Aichi Case*, being a judicial interpretation of a statute, constitutes part of that law as of the date of its original passage.[25] Otherwise stated, the Supreme Court's interpretation in the *Aichi Case* does not create a new law but construes a pre-existing one; it merely casts light upon the contemporaneous legislative intent of that law.[26]

Suffice it to state that under the doctrine of *stare decisis*, "***once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised***."[27] It likewise proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike.[28]

In the instant case, petitioner separately filed its administrative and judicial claims for unutilized input VAT refund on the following dates:

CTA Case No.	Period Covered	Administrative Claim Date of Filing	Judicial Claim Date of Filing
6714	April 1, 2001 to February 28, 2003	June 27, 2003[29]	June 30, 2003
7262	March 1, 2003 to August 31, 2004	May 31, 2005	May 31, 2005

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[25] See *Castro v. Hon. Deloria*, et al., G.R. No. 163586, January 27, 2009.
[26] *Id.*
[27] *Ayala Corporation v. Rosa-Diana Realty and Development Corporation*, G.R. No. 134284, December 1, 2000 *citing* 5 Am Jur 2d, Appellate Review § 599 citing Samsel *v.* Wheeler Transp. Servs., 246 Kan 336, 789 P2d 541. [Emphasis supplied.]
[28] *Id.*, *citing* 5 Am Jur 2d, Appellate Review § 599 citing State ex rel. Moore *v.* Molpus (Miss) 578 So 2d 624.
[29] On September 29, 2003, Petitioner filed a Supplemental Application with the BIR increasing the amount of unutilized input VAT for the same taxable period from the original amount of ₱26,122,965.81 to ₱27,847,897.72.

Based on the foregoing, it is clear that under *Section 112 (C) of the NIRC of 1997, as amended,* petitioner timely filed its administrative claims for unutilized input VAT refund/credit before the respondent on June 27, 2003 and May 31, 2005 for the period August 21, 2001 to February 28, 2003 and March 1, 2003 to August 31, 2004, respectively, as both claims were separately filed within the two-year prescriptive period reckoned from the close of the taxable quarter when the sales were made.

As to its judicial claims, however, records disclose that petitioner prematurely filed both its Petitions for Review before the Court in Division on June 30, 2003 and May 31, 2005, respectively. To be precise, the Petition for Review docketed as CTA Case No. 6714 was filed merely three (3) days after petitioner filed its application for refund before the respondent; while the Petition for Review docketed as CTA Case No. 7262 was filed on the same day petitioner filed its administrative claim. Evidently, in both Petitions for Review before the Court *a quo*, petitioner failed to comply with the mandatory period of 120-30 days under *Section 112(C) of the NIRC of 1997, as amended,* which is crucial in filing an appeal before the Court of Tax Appeals, as held in the *Aichi* Case.

Accordingly, petitioner's judicial appeal before the Court *a quo* were both premature as there were no CIR decision yet for this Court to review nor were there any inaction on the part of the CIR after the lapse of the 120-day period provided under *Section 112(C) of the NIRC of 1997, as amended*. Therefore, pursuant to the doctrine laid down under the *Aichi* Case, the consolidated Petitions for Review filed before the Court *a quo* warrants a dismissal on the ground of absence of jurisdiction to take cognizance of these cases.

Notably, it must be borne in mind that the "Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction."[30] Significantly, pursuant to *Section 7 of Republic Act (R.A.) No. 9282*, amending R.A. No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals,* the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of

[30] *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144.

Internal Revenue. Thus, the decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal,[31] specifically on a claim for refund, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 120-day period fixed by law for the Commissioner to act on a claim for refund.[32] Necessarily, the 30-day period after the receipt of such decision or ruling, or inaction on the part of the CIR within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the appeal or petition for review. Therefore, said period is not merely directory but mandatory and it is beyond the power of the courts to extend or shorten the same.

Further, the right to appeal is not a natural right or a part of due process, but it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[33] Thus, the

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[31] *Id.*

[32] *See Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., supra* Note 9.

[33] *Producers Bank of the Phil. vs. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185 *citing Ortiz vs. Court of Appeals*, 299 SCRA 708 (1998).

right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed.[34]

Finally, it is axiomatic in the law of taxation that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law must be construed in *strictissimi juris* against the entity claiming it.[35] Parenthetically, any claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based.[36] Hence, strict compliance with tax laws, specifically with the conditions set forth under *Section 112 (C) of the NIRC of 1997, as amended,* should be applied in this jurisdiction, considering that taxes are the lifeblood of the government and the price we pay for civilization.

Considering the finding of this Court *En Banc* that the Court *a quo* acquired no jurisdiction over the instant case, there is no cogent reason to further discuss the other issues raised in the said petition.

[34] *Bejarasco, Jr. v. People of the Philippines*, G.R. No. 159781, February 2, 2011.
[35] *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005.
[36] *Commissioner of Internal Revenue vs. Court of Appeals, et al.,* G.R. No. 124043, October 14, 1998, 298 SCRA 83.

WHEREFORE premises considered, the petition is hereby **DENIED**. The Amended Decision of the Special First Division of this Court in CTA Case Nos. 6714 & 7262 dated April 20, 2011 is hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my vote as promulgated in the Decision dated August 24, 2010.)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice